IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2149 OF 2006

Dr.Keki Minocher Mistry .. ..Petitioner

Versus

Helvetia Tours & Travel Pvt.Ltd. ..Respondents

Mr.Mohan Jayakar i/b Khaitan & Jayakar for petitioner

Ms Ranjana Parekh for respondents

CORAM : P.V.KAKADE, J.

DATE : 19TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. Rule, rule made returnable forthwith by consent.

3. The Petitioner-defendant has impugned the order passed by the trial judge dated 8.2.2006 rejecting his Notice and application for amendment of the written

statement basically on the ground that by the proposed amendment the defendant wants to raise certain points of law which according to the learned trial judge cannot be pleaded in pleading and therefore, in his opinion these points of law would be considered while deciding the suit, if needed and as such the application for amendment of the written statement came to be rejected on the ground that it was not required and hence the present petition.

4. The learned counsel for the petitioner has brought to my notice the contents of the Schedule of the proposed amendment. I have categorically perused the same. After hearing the learned counsel for the respondents, I am of the view that only paras 3, 4, 5, 6 and 8 would be necessary to be brought on record by way of amendment to the written statement. It is to be noted that basically the defendant is contesting the suit filed by the respondents under Section 16(g) of the Maharashtra Rent Control Act on the ground that the premises is required by the landlord reasonably and bonafide for their use and occupation for expansion of their present travel agency business. In order to rebut the said demand the defendant has come with the case that the

plaintiffs would not be permitted even under the DC Regulations 1991, which are currently in force, to use a place on the mezzanine floor for travel agency. It is also sought to be noted that under the CRZ Notification the plaintiffs cannot be given permission to use the place as a travel agency since on 19.2.1991, no travel agency was permitted at all in an R-2 area. These and similar contentions, which are in my view, not only essential but relevant for the purpose of adjudication of the suit effectively.

. Under the circumstances, I am inclined to hold that paras 3, 4, 5, 6 and 8 of the Schedule are required to be incorporated in the written statement by way of amendment in order to enable the defendant to defend his cause effectively and to that extent the rule is made absolute and petition is allowed.

5. The trial court shall allow the petitioner-defendant to amend the written statement in order to incorporate paras 3, 4, 5, 6 and 8 of the Schedule in the written statement and thereafter raise additional issues, if any. Both the parties would be at liberty to lead evidence on the basis of additional

issues which could be raised on the basis of amended written statement.

6. The learned counsel for the respondents urged that the suit is old and needs to be expedited. In view of the fact position I agree with the submission and it is directed that the entire process of effecting the amendment, raising the additional issues and continuing with recording of evidence of both the parties shall be expedited so as to dispose of the suit within a period of one year from the date of this order. It is also directed that the plaintiffs would be entitled to lead additional evidence, if any, on the basis of additional issues raised after the amended written statement.

7. With these directions the petition stands disposed of with no order as to costs.

.